

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

DENNA MARIE LOTT,

Plaintiff,

v.

CIVIL ACTION NO. 6:12-cv-00639

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

MEMORANDUM OPINION AND ORDER

On March 2, 2012, this case was initiated by Plaintiff's filing of a form Notice of Appeal that purports to be an appeal of an adverse decision of the Social Security Administration's Office of Disability Adjudication and Review. (Docket 1.) The one-page form is styled "Denna Marie Lott, 1010 14th Ave, Vienna, WV v. Appeals Council." (*Id.*) The form states that Plaintiff "hereby appeals(s) to the United States Court of Appeals for the Fourth Circuit from the Appeals Council entered in this action on February 6, 2012." (*Id.*) The form further indicates that the Notice of Appeal was filed by "Jan Dils, Attorney for Appellant(s), 963 Market St., Parkersburg, WV 26101," although the envelope containing the Notice of Appeal bears the hand-written address of the United States District Court in Charleston, West Virginia and Plaintiff's Vienna, West Virginia return address. (*Id.*, Attachment #1.)

On March 27, 2012, this Court referred this matter to Magistrate Judge Mary E. Stanley for submission of proposed findings of fact and a recommendation ("PF&R") pursuant to 28 U.S.C. §

636(b)(1)(b) and, on that same day, Magistrate Judge Stanley issued a PF&R recommending that the Court dismiss this matter for failure to prosecute under Federal Rule of Civil Procedure 41(b). [Docket 3.] The PF&R states that Magistrate Judge Stanley contacted Jan Dils. Ms. Dils stated that, although she had represented Plaintiff in unsuccessful administrative proceedings before the Social Security Administration (“SSA”), she did not represent Plaintiff in any appeal in federal court. (*Id.*) Magistrate Judge Stanley then wrote Plaintiff, advised her that the Notice of Appeal was not the appropriate filing for instituting an appeal of an adverse decision of the SSA, enclosed a Complaint and Application to Proceed without Prepayment of Fees and Costs, and encouraged Plaintiff to return the Complaint and Application at her earliest convenience to the Clerk’s Office—or risk dismissal of the case. (*Id.*) Plaintiff has not, to date, responded to Magistrate Judge Stanley’s communications.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and Petitioner’s right to appeal this Court’s Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Stanley’s PF&R were due on April 14, 2012, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections to the PF&R have been filed.

Accordingly, the Court hereby **ADOPTS** the PF&R [Docket 3], **DISMISSES** this case,


and **DIRECTS** the Clerk to remove this action from the Court's docket.

The Clerk is further directed to provide a copy of this Order to all counsel of record, the Plaintiff, and Magistrate Judge Stanley.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: NOVEMBER 9, 2012

A handwritten signature in blue ink, appearing to read 'Thomas E. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE